UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

STATES OF NORTH DAKOTA, ALASKA, ARIZONA, ARKANSAS, COLORADO, IDAHO, MISSOURI, MONTANA, NEBRASKA, NEVADA, SOUTH DAKOTA, and WYOMING; NEW MEXICO ENVIRONMENT DEPARTMENT; and NEW MEXICO STATE ENGINEER Petitioners, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al. Respondents.	)	Case No. 3:15-cv-00059-RRE-ARS

STATES' MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Federal Rule of Civil Procedure 65, the States of North Dakota, Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, South Dakota, and Wyoming, and the New Mexico Environment Department and New Mexico State Engineer (the "States"), by and through undersigned counsel and pursuant to N.D. Civ. L.R. 7.1 (B), respectfully requests the Court issue an order enjoining the final regulation entitled "Clean Water Rule: Definition of Waters of the United States," 80 Fed. Reg. 37,054-127 (June 29, 2015) (the "WOTUS Rule" or the "Rule"), jointly promulgated by the U.S. Environmental Protection Agency ("EPA") and U.S. Army Corps of Engineers ("Corps") (collectively the "Agencies")

The WOTUS Rule, which is set to go into effect on August 28, 2015, provides sweeping changes to the jurisdictional reach of Clean Water Act ("CWA"), drastically altering the administration of water quality programs implemented by the States, EPA, and the Corps.

Through the Rule, the agencies assert the authority to regulate land and water resources in the States, thereby infringing upon the States' sovereign and economic interests. If it is allowed to go into effect, the WOTUS Rule will irreparably harm the States' sovereign interests and their State budgets during the pendency of this litigation. Moreover, the States are likely to prevail on the merits of their challenge because the WOTUS Rule exceeds the federal government's constitutional and statutory authority and violates the procedural mandates of the Administrative Procedures Act ("APA"), 5 U.S.C. §§ 551 et seq., and the National Environmental Policy Act, 42 U.S.C. §§ 4371 et seq. Both the balance of harms and the public interest also favor the instant motion.

In support of their motion, the States submit their Memorandum in Support of the States' Motion for Preliminary Injunction, along with the following declarations, attached as Exhibits to the Memorandum in Support: (1) Declaration of Lynn Helms, Director of the North Dakota Industrial Commission, Department of Mineral Resources; (2) Dave Glalt, Chief of the Environmental Health Section, North Dakota Department of Health; (3) Todd Sando, P.E., State Engineer for the State of North Dakota; (4) Grant Levi, Director of the North Dakota Department of Transportation; (5) Doug Goehring, Agriculture Commissioner of the State of North Dakota; (6) Duane DeKrey, General Manager of the Garrison Diversion Conservancy District, State of North Dakota; (7) Michelle Hale, Director of the Division of Water, State of Alaska Department of Environmental Conservation; (8) John S. Halikowski, Director of the Arizona Department of Transportation; (9) Todd Parfitt, Director of the Wyoming Department of Environmental Quality; (10) Patrick T. Tyrrell, Wyoming State Engineer; (11) Trais Kliphuis, Director of the Water Protection Division of the New Mexico Environmental Department.

Because the Rule is set to become effective August 28, 2015, the States request the Court schedule a hearing on this Motion during the week of August 24, 2015. The Agencies' response to this Motion will be due on August 24, 2015, and the States will forgo a reply to allow a hearing to occur that week.

For the reasons set forth herein and in the accompanying Memorandum, the States respectfully moves the Court to:

(1) Schedule oral argument the week of August 24, 2015; and

(2) Grant its Motion for Preliminary Injunction pending resolution of the States' challenges on the merits.

Dated this 10th day of August, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2015, I electronically filed the foregoing **PETITIONER STATES' MOTION FOR PRELIMINARY INJUNCTION** with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record.

/s/ Paul M. Seby

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